It was not stated whose alter ego the Principal Establishment Officer was supposed to be.

The whole question however is summed up with great clarity to my mind in *Maxwell on Interpretation of Statutes,* 11th Edition, at page 364 which reads as follows:—

"It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instructon involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and, when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope and purpose of the statute under consideration must be regarded. The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

A strong line of distinction may be drawn between cases where the prescriptions of the Act affect the performance of a duty and where they relate to a privilege or power. Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is therefore probable that such was the intention of the legislature. But when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

In addition the wording of section 2 of the Delegation of Powers Ordinance, 1952, itself cannot in my opinion bear the interpretation put on it by the defendant. This section reads as follows:—

"2. Where by any written law the High Commissioner is empowered to exercise any powers or perform any duties, he may, by notification in the *Gazette,* delegate subject to such conditions and restrictions as may be prescribed in such notification the exercise of such powers or the performance of such duties to any person described by name or office:....."

It seems to me clear from the wording of this section "he may by notification in the *Gazette,* delegate subject to such conditions and restrictions as may be prescribed in such notification" that any delegation which the High Commissioner sees fit to make is made by notification in the *Gazette.* That is to say the act of delegation is only complete when the instrument of delegation is contained in a notification published in the *Gazette.* Any conditions and restrictions to which any delegation is subject are those which are prescribed in the notification and it seems to me to follow that the notification itself must be the operative act of delegation.

As it was admitted by the defendant that at no time had the powers contained in section 10(f) of the Pensions Ordinance, 1951, ever been delegated by notification in the *Gazette* to anyone it follows that the purported retirement of the plaintiff was void and of no effect.

There will be judgment for the plaintiff as follows:—

Prayer 1. A declaration that his purported retirement from the post of Assistant Controller of Foreign Exchange was void, inoperative and of no effect.

Prayer 2. An order that the defendant do pay to the plaintiff all arrears of pay, allowances and other emoluments from the date of the said purported retirement.

Prayers 3, 4 and 5. No order.

Prayer 6. Plaintiff's costs to be taxed and paid by the defendant.

Judgment for the plaintiff.

Solicitors:—*Jag-Jit Singh*; *Presgrave & Matthews.*

LEE YEN & ORS. v. KEPONG MINES LTD.

[O.C.J. (Azmi J.) October 29, 1963]

[J.B. — Muar Civil Suit No. 26 of 1963]

Workmen's Compensation Ordinance, 1952 ss.27, 28, 41(1)—Death of workman—Commissioner of Labour holding inquiry on his own volition—Commissioner adjudging compensation—Instalment payment to widow of deceased —Acceptance of one such instalment—Whether rejection of other instalments and subsequent claim for damages barred.

The plaintiffs the widow and infant children of the deceased claim damages for the negligence of the servant or agent of the defendant company as a result of which the deceased an employee of the defendant company met his death due to injuries sustained whilst in the course of the defendants employment. Soon after the death of the deceased the Commissioner for Labour instituted inquiries under section 27(2) of the Workmen's Compensation Ordinance and at a hearing in the presence of the widow adjudged that the defendant company pay to the plaintiffs $7,200 as compensation under the Ordinance. The money was placed on trust with the State Social Welfare Officer (to disburse it by monthly instalments) who paid the widow the first instalment of $110 on October 15, 1962. Subsequently the second and third instalments were rejected by her because she was not satisfied with the *quantum* and she had been advised not to accept compensation.

It was argued for the defendant company that the claim was barred under section 41(1) of the said Ordinance because it was as a result of the agreement of the three parties that the Commissioner finally made the adjudication by fixing the compensation at $7,200 though the Commissioner who held the inquiry admitted that

so far as the widow was concerned he merely implied that the widow had agreed.

Held: the claim was not barred under section 41(1) of the Ordinance because (a) the widow had not applied to the Commissioner to settle any question under section 27(2), and (b) although it could be said that an agreement had been reached between the widow and the defendant company such agreement had not been recorded under section 28 of the said Ordinance.

Case referred to:—

(1) *Leathley* v. *John Fowler and Coy. Ltd.* [1946] 2 All E.R. 326.

CLAIM FOR DAMAGES.

Denis Murphy for the plaintiffs.

K. C. Chan for the defendants.

Cur. Adv. Vult.

Azmi J.: This is a claim by the widow of Voon Ngut Fah, deceased, on behalf of herself and children for damages for negligence of the servant or agent of the defendant company.

The deceased was a workman employed by the defendant company and his death was due to injuries sustained whilst in the course of his employment. The defendant company admitted negligence but alleged, to put it briefly, that the claim is barred by reason of the fact that the widow had already accepted the adjudication by the Commissioner for Labour of compensation due by reason of the death of the workman under the Workmen's Compensation Ordinance and part of which compensation she had received.

The facts of the case are that soon after the report of the death of the workman had been made the Commissioner for Labour instituted enquiries under section 27(2) of the Workmen's Compensation Ordinance, and at a hearing in the presence of the widow adjudged that the defendant company pay to the plaintiffs $7,200 as compensation under the Ordinance. The defendant company had previously deposited such sum of money with the Commissioner. Subsequently another officer of the Labour Department distributed the compensation among the widow and the children and directed that the State Social Welfare Officer, with whom the money is placed on trust, disburse the money by monthly instalments. On 15th October, 1962, the State Social Welfare Officer paid the widow the first payment of $110.

In my view the widow knew that this first payment was part payment of the compensation, but I accept her evidence that when the second and third instalments were offered to her she rejected them because she was not satisfied with the *quantum* as she in the meantime had been advised not to accept any compensation. As a matter of fact she had also consulted another lawyer before she accepted the first payment who, according to her, also gave similar advice.

Mr. Chan for the defendant company submitted that this claim is barred under section 41(1) of the Workmen's Compensation Ordinance. Section 41(1) provides as follows:

> "41(1). Nothing contained in this Ordinance shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted and is prosecuting a suit for damages in respect of that injury in any Court against his employer or if he has recovered damages in respect of that injury in any Court from his employer; and no suit for damages shall be maintainable in any Court by a workman against his employer in respect of any injury —
>
> (a) if he has applied to the Commissioner to settle any question in respect of the injury under sub-section (2) of section 27; or
>
> (b) if an agreement has been come to between the workman and the employer and such agreement has been recorded under section 28;"

It will be seen that under paragraphs (a) and (b) of this sub-section the suit would be barred (a) if the workman had applied to the Commissioner to settle any question in respect of the injury under sub-section (2) of section 27, or (b) if an agreement has been come to between the workman and the employer and such agreement has been recorded under section 28.

Section 2(3) provides that any reference to a workman who has been injured shall, unless the context otherwise requires, where the workman is dead, include a reference to his legal personal representative or to his dependants.

Section 10(1) requires any payment of compensation in respect of a workman whose injury has resulted in death to be made only by deposit with the Commissioner. Sub-section (5) goes on to provide that the Commissioner shall make such inquiry under section 27 as he may deem necessary to determine the number of dependants of a deceased workman and the extent to which they were dependent upon him. Sub-section (6) provides that the compensation deposited shall be apportioned among the dependants of the deceased workman.

Section 27(1) provides that if any question arises under this Ordinance that question shall be settled by agreement between the Commissioner, the workman and the employer and for the purposes of reaching such agreement the Commissioner may hold an inquiry.

Mr. Chan therefore urged that it was as a result of the agreement of the three parties that the Commissioner finally made the adjudication by fixing the compensation at $7,200 to the widow and all the children of the deceased, though in this case the Commissioner himself who held the enquiry admitted that so far as the widow was concerned, he merely implied that

the widow had agreed.

Now section 28 requires that where the amount of compensation by way of a lump sum has been ascertained by agreement between the workman and his employer a memorandum shall, within 14 days, be sent by the employer to the Commissioner, who, on being satisfied as to its genuineness and that the amount of compensation agreed upon is adequate shall record the memorandum in a register in the prescribed manner.

Section 30 provides that where any question arises which a workman, his employer and the Commissioner cannot settle by agreement under section 27, such question shall be decided by an arbitrator.

Section 36 goes on to provide that when an arbitrator has decided the question or questions submitted to him under section 30 he shall send a certified copy of his order to the Commissioner, before whom the original enquiry under section 27 was held.

Section 40 provides that where any order has been made by an Arbitrator or any agreement recorded by the Commissioner, the Commissioner shall, at the request of any person claiming under such order or agreement, send a certified copy thereof to the Sessions Court and the Registrar of the Court shall then record such order or agreement and such order or agreement shall be enforceable as a judgment of the Sessions Court.

It is my view on the facts of the case that the widow did not apply to the Commissioner to settle any question under section 27(2).

With reference to section 41(1)(b), it is my opinion that though it could be said that an agreement had been come to between the widow and the employer, such agreement has not been recorded under section 28. For that reason I think that the defence under section 41(1)(a) and (b) must fail.

Mr. Murphy cited to me the English case of *Leathley* v. *John Fowler and Coy. Ltd.*[1] The corresponding English statutory provision is not on all fours with section 41 of our Ordinance. The relevant part of section 29 of the Workmen's Compensation Act, 1925, says as follows:

"(1) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid."

It will be seen that under this sub-section where the injury was caused by the personal negligence or wilful act of the employer or some person for whose act or default the employer is responsible, the workman may take proceedings independently of the act, but then it goes on to provide that the employer shall not be liable to pay compensation to the workman both independently of and also under this act except in the case of such personal negligence or wilful act as aforesaid. Briefly, the above case would appear to state the law to this effect, namely that a workman who has accepted compensation is not barred from suing for damages unless at the time of accepting the compensation he was aware of the option given by section 29 of the Workmen's Compensation Act, 1925.

I do not consider the English case could give me any assistance since, as I have said, the English provisions are different from ours.

Mr. Chan also refers me to section 20 of the Workmen's Compensation Ordinance. That section provides that where any injury for which compensation is payable under the Ordinance was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Ordinance, but he shall not be entitled to recover both damages and compensation. I do not consider that this section really applies to this case because the section provides for a case where a workman claims against his employer for compensation under the Ordinance and also against a third person for damages. In any case Mr. Murphy quite rightly conceded that he would see that the money received by the widow would be refunded to the defendant company, and gave me an undertaking to that effect.

I will now deal with the damages. The deceased's pay was $280 p.m. I take consideration of the fact that the remittances to the mother would probably cease in a very few years time since the old lady is about 75 now and, having regard to the evidence, I would assess the amount of support enjoyed by the plaintiffs at $200 a month.

With reference to the life expectation, I would say that 16 years would be a proper figure. On the above figures I would therefore assess the general damages at $26,000 but I would deduct $694 being the amount of Provident Fund paid by the employer and which the widow received. I would also deduct the $110 which she had received from the Welfare Officer.

With reference to the funeral expenses agreed at $700, the widow admitted having received it, so I would ignore this. There will, therefore, be judgment for $25,196 and costs.

I would also make a suggestion that the balance of compensation with the State Welfare Officer should be refunded to the employer. If $250 had indeed been sent to the deceased's mother in China and paid from the compensation, the widow must refund this money to the State Welfare Officer.

With reference to the damages I would distribute as follows:—

Widow	$14,196
Woon Kim On	1,000
Voon Kiew Foong ..	1,000
Voon Kio Soo	1,200
Voon Sow Kong	1,500
Voon Shu Kong	1,800
Voon Keok Kiau	2,000
Bon Chong Heng	2,500

The shares of infants to be deposited in the name of the Public Trustee, Kuala Lumpur, as trustee, with Hongkong & Shanghai Bank, Kuala Lumpur, until the infants reach the age of 21 years.

Order accordingly.

Solicitors:—*Murphy & Dunbar; Braddell Bros.*

JAGAT SINGH v. ARTHUR HENG

[O.C.J. (Choor Singh J.) November 18, 1963]

[Singapore — Suit No. 1607 of 1961]

Moneylending—Moneylenders Ordinance (Cap. 193) and Moneylenders Ordinance, 1959—Payment of smaller sum by third party to discharge larger sum—Accord and satisfaction—Principle applicable.

Though payment of a smaller sum cannot be a good consideration for accord and satisfaction of a claim for a larger one, yet if there is anything which can be a new consideration and a new benefit to the person entitled to the larger sum, that would support accord and satisfaction.

If a stranger pays a part of a debt in discharge of the whole, the debt is gone because it would be fraud on the stranger to proceed.

Bidder v. *Bridges* (3) and *Hirachand Punamchand* v. *Temple* (4) applied.

Cases referred to:—

(1) *Surain Singh* v. *Yatim Eusope* [1962] M.L.J. 223.

(2) *Foakes* v. *Beer* (1884) 9 App. Cas. 605.

(3) *Bidder* v. *Bridges* (1887) 37 Ch. D. 406.

(4) *Hirachand Punamchand* v. *Temple* [1911] 2 K.B. 340.

ACTION.

R. Ramason for the plaintiff.

L. Rayner for the defendant.

Choor Singh J.: At the conclusion of the trial of this action, I dismissed the plaintiff's claim with costs and intimated that I would give my reasons later. This I now proceed to do.

This action was brought to recover the sum of $1,322.97 alleged to be due upon a promissory note dated the 1st May, 1958. It was not disputed that at the time of making the loan the plaintiff was a moneylender within the meaning of the term as defined in the Moneylenders Ordinance (Chapter 193), (hereinafter referred to as the old Ordinance). The uncontradicted evidence of the plaintiff was that he ceased to carry on business as a moneylender from the 11th September, 1959, when the old Moneylenders Ordinance was repealed by the Moneylenders Ordinance, 1959, (hereinafter referred to as the new Ordinance), and resumed his moneylending business in December, 1962, when he became a licensed moneylender under the new Ordinance.

The plaintiff's claim was contested on two grounds. First, it was alleged by the defendant that the contract in respect of this loan was unenforceable by virtue of section 5 of the old Ordinance because the principal was shown as $1,000 in the promissory note when in fact it was only $700, and because a copy of the promissory note was not given to the defendant by the plaintiff. Secondly, it was alleged by the defendant that there was accord and satisfaction on the 1st December, 1961, when it was orally agreed between the plaintiff, the defendant, and the defendant's employers, Holiday, Cutler, Bath & Co., Ltd., that the employers should pay to the plaintiff $714 out of their own moneys in full settlement of all debts due to the plaintiff from the defendant, and the employers on the 1st December, 1961, paid to the plaintiff the sum of $714 accordingly.

As to the first ground, it was contended by counsel for the plaintiff that the old Ordinance having been repealed by the new Ordinance, the defendant could not rely on any of the provisions of the old Ordinance. Counsel cited *Surain Singh* v. *Yatim Eusope,*(1) and repeated the argument advanced in that case. As this point of law was not fully argued before me, I do not think it necessary or desirable for me to express my view thereon, nor do I consider it necessary or desirable to decide the questions of fact raised by the defendant as I find that the defendant succeeds on his second contention.

The second contention of the defendant was that there was accord and satisfaction of a loan